

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Access Charge Reform)

CC Docket No. 96-262

**COMMENTS OF KMC TELECOM INC. IN SUPPORT OF
 TCG's PETITION FOR RECONSIDERATION**

KMC Telecom Inc. ("KMC") through its undersigned counsel and pursuant to Section 1.429 of the Federal Communications Commission's ("Commission") rules, submits these Comments in support of Teleport Communications Group's ("TCG") Petition for Reconsideration of the Commission's First Report and Order,^{1/} in which the Commission adopted rules to reform interstate access charges. In particular, these Comments support TCG's position that a fresh look opportunity should be afforded to customers purchasing transport from price cap local exchange carriers ("LECs"). In addition, these Comments support the Petition for Reconsideration of Worldcom, Inc. ("Worldcom"), to the extent that Worldcom seeks clarification of the Commission's decision regarding waiver of nonrecurring reconfiguration charges.

**I. THE COMMISSION SHOULD IMPLEMENT A FRESH LOOK REQUIREMENT
 FOR TRANSPORT CUSTOMERS TO ENSURE COMPETITIVE ALTERNATIVES**

KMC strongly supports TCG's position that the Commission should implement a fresh look opportunity for transport customers and urges the Commission to adopt such a fresh look policy. As later discussed, under the new three part rate structure for access charges, switched transport customers may wish to switch to a competitive access provider, such as KMC. However, since a large

^{1/} *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, FCC 97-158 (rel. May 16, 1997) ("Access Charge Reform Order").

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number of transport arrangements are subject to long term contracts, without a fresh look opportunity, incumbent LEC transport customers will be unable to switch to KMC or another competitive access provider without incurring substantial termination charges. Unless the Commission adopts a fresh look policy, many incumbent LEC transport customers will effectively be unable to avail themselves of the benefits of competition.

As noted by TCG, the Commission has previously implemented fresh look requirements to promote flexibility and competitive choice in LEC access arrangements. The Commission specifically found that many long term access arrangements raise potential concerns because they tend to lock up the access market, preventing customers from obtaining the benefits of competition.^{2/}

Despite Commission decisions implementing competition in the access market and the enactment of the Telecommunications Act of 1996, competition in the access market has not yet developed to any significant degree.^{3/} The Commission must not underestimate the negative impact that customers' long term contracts with incumbent LECs has had on the development of competition. As the Commission noted, several competitive entrants have expressed their capability and desire to offer some or all of the components of tandem-switched transport on a competitive basis.^{4/} Although these parties cited the unitary rate structure as a factor inhibiting the development of competition, the existence of long term contracts cannot help but impede the efforts of new entrants to establish a foothold in the local exchange market.

^{2/} Expanded Interconnection with Local Telephone Company Facilities, 8 FCC Red 123, 125 (1992).

^{3/} *Access Charge Reform Order*, at ¶ 179.

^{4/} *Access Charge Reform Order*, at ¶ 179.

Incumbent LECs have long term access contracts with many interexchange carriers. To the extent that these contracts contain provisions requiring customers seeking early termination to pay a stiff penalty, few, if any, would consider purchasing service from another provider prior to the expiration of the contracts. These customers will, therefore, remain trapped for extended periods of time in arrangements entered into in a monopoly environment and will be denied the benefits of competition. Consequently, the Commission's failure to require a fresh look will greatly diminish the extent to which competition in the tandem-switched transport market will develop. One of the Commission's primary goals in restructuring the transport rate structure was to promote competition in the switched access market. The competitive opportunities that the Commission expects the unitary rate structure to provide will be foreclosed if such customers cannot choose from among competitive alternatives. Affording customers who are parties to long term agreements with incumbent LECs a fresh look opportunity, on the other hand, will ensure that those customers may take advantage of the benefits of competitive choice.

Without a fresh look opportunity, the goals of the Telecommunications Act of 1996 will be frustrated. Long term contracts that lock up the most lucrative segments of the market enable incumbent LECs to maintain control of the access market and suppress competition. Customers that are parties to long term agreements will be denied a choice of telecommunications services, facilities and providers for a significant period of time and will be prevented from selecting among a number of providers the one that will best satisfy their needs in terms of technology, service, efficiency and price. Given the anticompetitive effects engendered by long term contracts entered into by incumbent LECs, the failure to afford a fresh look opportunity to customers that are parties to those contracts would be the antithesis of consumer protection.

Consumer protection considerations have prompted several states to grant fresh look opportunities to parties to long term contracts with incumbent LECs in the local exchange market. The Public Utilities Commission of Ohio, for example, has required incumbent LECs to provide a fresh look opportunity for parties to long term contracts for local exchange service, noting that:

the existence of certain long-term arrangements raise potential anticompetitive concerns since these arrangements have the effect of locking out the competition for an extended period of time and prevent consumers from obtaining the benefits of this competitive local exchange environment.^{5/}

The Ohio Commission requires incumbent LECs to inform their customers when a fresh look opportunity has been declared for their market and has developed an informational letter to that competitive carriers can use to educate consumers.

Similarly, the Wisconsin Public Service Commission has determined that providing a fresh look opportunity for local exchange customers will promote the development of competition and ensure that consumers are able to utilize competitive alternatives. The Commission found that:

a fresh-look procedure would promote competition in telecommunications by increasing the number of potential customers available to new entrants, and by significantly expanding the choices for customers to a larger array including, potentially, several facilities-based telecommunications network providers.^{6/}

The Wisconsin Commission has announced its intention to promulgate fresh look rules by the Fall of 1997.

^{5/} *In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*, Case No. 95-845-TP-COI, at 47 (Ohio P.U.C. June 12, 1996).

^{6/} *Supplemental Findings of Fact, Conclusions of Law and Interim Order re Investigation of the Appropriate Standards to Promote Effective Competition in the Local Exchange Telecommunications Market in Wisconsin*, Docket No. 05-TI-138, at 4 (WI P.S.C. Sep. 19, 1996) (emphasis in original).

The Pennsylvania Commission considered a proposal by GTE to provide discounts for customers committing to one to three year contracts for intraLATA toll service. The Commission refused to accept GTE's proposal unless GTE offered a fresh look and agreed to waive the early termination charge for customers who chose to terminate their contracts within one year from the date that intraLATA presubscription was implemented within the customer's exchange. The Pennsylvania Commission based its order upon the following rationale:

Our main concern here is that a GTE customer who locks into a one, two or three year term agreement with GTE Easy Savings Plan, before intraLATA presubscription is implemented in a particular exchange, would be required by GTE's tariffs to pay a penalty in the instance a more suitable intraLATA service became available. As such, GTE could be viewed as cornering the market because of the early penalty charge that was established before intraLATA presubscription was implemented.⁷¹

See also In re Sprint Communications Company, 1994 WL 386294 (NJ B.P.U., 1994) (customers with customer specific pricing arrangements for intraLATA toll granted option to terminate contracts without penalty upon introduction of intraLATA toll competition).

In granting a fresh look opportunity for private line and special access customers after the introduction of expanded interconnection, the Florida Commission emphasized the prejudice that consumers would suffer if they were compelled to remain in long term contractual arrangements with the monopoly provider once alternatives were available:

[I]ntroducing competition, or extending the scope of competition, provides end users of particular services with opportunities that were not available in the past. However, these opportunities are temporarily foreclosed to end users if they are not able to choose competitive alternatives because of substantial financial penalties for

⁷¹ *Pennsylvania Public Utility Comm. v. GTE North Inc.* 1996 WL 552841 (PA P.U.C. Aug. 8, 1996).

termination of existing contract arrangements. A fresh look proposal will enhance an end user's ability to exercise choice to best meet its telecommunication needs.^{8/}

While long term customer contracts may not have violated the public interest when they were entered into, the sweeping changes in the regulatory climate over the last few years render such long term contracts contrary to the public interest unless the customers are afforded an opportunity to select a carrier other than the incumbent LEC without incurring onerous financial penalties. Both Congress and the Commission have made the affirmative determination that competition in the access market serves the public interest and that customers will benefit from having a choice of carriers.^{9/} In the absence of a fresh look, the public interest will not be served because parties to long term contracts will be denied the benefits of competition for the term of those agreements in direct contravention of the public policy favoring competitive choice.

The absence of fresh look is also a serious deterrent to entry into the access market. New entrants have little incentive to invest in an area where the incumbent LEC not only has a disproportionate market share today, but also has long term contracts with its most lucrative customers that will allow it to maintain a dominant position in the future. By refusing to provide a fresh look, the Commission would be implicitly condoning incumbent LECs' efforts to protect their customer base and limit the development of competition through the use of long term contracts.

^{8/} *Intermedia Communications of Florida, Inc.*, 1994 WL 118370 (Fla. P.S.C.), *reconsidered*, 1995 WL 579981 (Fla. P.S.C., Sep. 21, 1995).

^{9/} *Access Charge Reform Order*, at ¶ 1.

II. THE COMMISSION SHOULD CLARIFY THAT ILECS MUST WAIVE RECONFIGURATION NONRECURRING CHARGES IF CUSTOMERS DECIDE TO SHIFT TRAFFIC FROM ILECS TO CAPS

In the Access Charge Reform Order, the Commission directed all incumbent LECs to discontinue the unitary rate structure option for the transmission component of tandem-switched transport.^{10/} The Commission mandated that incumbent LECs, by July 1, 1998, implement a three part rate structure for tandem-switched transport as follows: (1) a per minute charge for transport of traffic over common transport facilities between the LEC end office and the tandem office; (2) a per minute tandem-switching charge; and (3) a flat rate charge for transport of traffic over dedicated transport facilities between the serving wire center and the tandem-switching office. The Commission recognized that the newly established three part rate structure may cause some tandem-switched transport customers to increase their use of direct-trunked transport relative to tandem-switched transport, which would require a network adjustment.^{11/} As a result, the Commission required incumbent LECs to waive certain nonrecurring charges (beginning on the date OMB approves the rule, and continuing until six months after the three part rate structure becomes mandatory) for connection when a transport customer converts trunks from tandem-switched to direct-trunked transport or orders the disconnection of overprovisioned trunks.^{12/}

In its Petition for Reconsideration, Worldcom properly argued that the Commission should clarify that incumbent LECs must also waive reconfiguration nonrecurring charges that apply if

^{10/} *Access Charge Reform Order*, at ¶ 175.

^{11/} *Access Charge Reform Order*, at ¶ 176.

^{12/} *Access Charge Reform Order*, at ¶ 176.

customers decide to shift traffic from incumbent LEC networks to competitive access providers' networks.^{13/} KMC concurs with Worldcom that in response to the new incumbent LEC rate structure, customers may decide to shift traffic to competitors, since the competitor may offer a unitary rate structure for tandem-switched transport, or better service or lower prices for dedicated transport. For this reason, KMC urges the Commission to clarify that incumbent LECs should be required to waive nonrecurring charges that apply to rerouting traffic to a competitive access provider's transport service.

CONCLUSION

As previously discussed, under the new three part rate structure for access charges, switched transport customers may wish to switch to a competitive access provider, such as KMC. However, since a large number of transport arrangements are subject to long term contracts, without a fresh look opportunity, incumbent LEC transport customers will be unable to switch to KMC or another competitive access provider without incurring substantial termination charges. Unless the Commission adopts a fresh look policy, many incumbent LEC transport customers will effectively be unable to avail themselves of the benefits of competition. For these reasons, KMC strongly urges the Commission to adopt a fresh look policy that will enable tandem-switched transport customers to switch to a competitive access provider without incurring substantial termination penalties.

^{13/} Worldcom's Petition for Reconsideration, at 20.

In addition, KMC asserts that the Commission should clarify that incumbent LECs must waive reconfiguration nonrecurring charges that apply if customers decide to shift traffic from incumbent LEC networks to competitive access providers' networks.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kemal M. Hawa".

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August 18, 1997

CERTIFICATE OF SERVICE

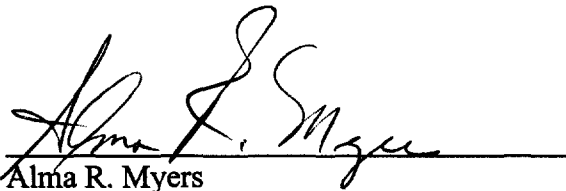
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